

SUMMARY OF PROPOSED CD1:

**BILL 37 (2012)
RELATING TO AMENDING ORDINANCE NO. 01-28**

PROPOSED CD1:

The bill has been amended as follows:

1. Additional language is added to the findings and determinations section to explain why the council believes it is necessary to impose conditions on the issuance of commercial paper for the transit project to ensure that the HART will reimburse the City for the debt service on the commercial paper.
2. Substantive changes are made to the bill to ensure that the City will be reimbursed for the debt service by HART.
3. A cap of \$100 million is set for the commercial paper to be issued for the transit project. This cap can only be exceeded if there is a catastrophic event.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 37 (2012), CD1

A BILL FOR AN ORDINANCE

PROPOSED

AMENDING ORDINANCE NO. 01-28.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the authorization for the City and County of Honolulu (the "City and County") to issue general obligation commercial paper in order to clarify and facilitate the use of such debt.

SECTION 2. Findings and Determinations.

Pursuant to Section 237-8.6 of the Hawaii Revised Statutes ("HRS"), counties are permitted to establish a 0.5% surcharge (to be collected and distributed by the State) (the "County Surcharge") on the existing 4.0% State general excise tax (the "State Excise Tax") in order to fund transportation projects. On August 15, 2005, the Council of the City and County of Honolulu (the "Council") adopted Ordinance 05-027 establishing the County Surcharge, the receipts of which must be spent on either: (a) operating or capital costs of a locally preferred alternative for a mass transit project, or (b) expenses in complying with the Americans with Disabilities Act of 1990 with respect to (a). The Council subsequently adopted Ordinance 07-001 to, among other matters, select a fixed guideway system between Kapolei and the University of Hawaii at Manoa as the local preferred alternative for the Honolulu High Capacity Transit Project (the "HHCTP"), and other actions relating thereto. In addition, on December 16, 2009, the Council adopted Resolution 09-252, CD1, to initiate amendments to the Revised Charter of the City and County of Honolulu 1973, as amended ("Charter"), to create the Honolulu Authority for Rapid Transportation ("HART"), a public transit authority responsible for the planning, construction, operation, maintenance and expansion of the HHCTP. Such amendments to the Charter provided, among other things, that the Board of Directors of HART shall fix rates and charges for the HHCTP so that revenues derived therefrom, in conjunction with revenues from the County Surcharge, from the federal government, and from the revenue-generating properties of HART, shall be sufficient or as nearly sufficient as possible, to support the HHCTP and HART. However, at this time such revenues are not sufficient or not as nearly sufficient as possible, to support the HHCTP and HART.

On July 14, 2010, the Council adopted Ordinance 10-15 amending Ordinance 01-28 to expand the purposes for which proceeds from the City's general obligation commercial paper may be applied to include public improvements to the City and County's wastewater system and the water system managed by the Board of Water Supply of the City and County (the "Board of Water Supply"). Both the City and County



A BILL FOR AN ORDINANCE

and the Board of Water Supply are bound by their revenue bond covenants with respect to the issuance of wastewater system revenue bonds and water system revenue bonds, respectively, that mandate that they each (a) fix, charge and collect rates and other charges that produce revenues sufficient to pay debt service and related obligations; (b) satisfy coverage requirements prior to issuing any additional bonds secured by their respective revenue streams; and (c) maintain reserves for debt service. In addition, both the City and County (with respect to its wastewater system) and the Board of Water Supply have proven credit histories with respect to the timely payments of debt service and both have demonstrated the self-sustainability of their respective systems.

Therefore, the Council believes that it is necessary to impose certain conditions on HART in connection with the issuance of general obligation commercial paper by the City in connection with the HHCTP to assure that HART reimburses the City and County for any payments of principal and interest and any costs incurred by the City and County relating to the issuance of general obligation commercial paper and other forms of general obligation indebtedness for public improvements, including equipment, relating to the HHCTP.

Furthermore, the City Council of the City and County of Honolulu (the "Council") hereby finds and determines: (1) the Council has heretofore adopted Ordinance No. 01-28, as amended by Ordinance No. 04-36 and Ordinance 10-15, authorizing the issuance and sale and specifying certain terms of general obligation commercial paper of the City and County, and authorizing and providing for certain related matters; and (2) it is advisable, expedient and in the best interests of the City and County to increase the amount of such commercial paper to be issued and expand the purposes for which proceeds of such commercial paper may be applied to include public improvements relating to the Honolulu High Capacity Transit Project ("HHCTP") managed by the Honolulu Authority for Rapid Transportation ("HART").

SECTION 3. Ordinance 01-28 is amended by amending Section 2 to read as follows:

"SECTION 2. Authorization of Commercial Paper. Pursuant to Chapter 47, Hawaii Revised Statutes, as amended, and the Revised Charter of the City and County, there are hereby authorized for issuance and sale from time to time general obligation notes (the "Commercial Paper" and each a "Commercial Paper note") of the City and County, including renewals and extensions thereof, in an aggregate principal amount at any one time outstanding not to exceed [Three Hundred Fifty Million Dollars (\$350,000,000)] Four Hundred Fifty Million Dollars (\$450,000,000), for the purpose of (a) refunding all or a part of any General Obligation Bonds and any Commercial Paper and any reimbursement obligations to the provider of any credit or liquidity facility as the



A BILL FOR AN ORDINANCE

Director of Budget and Fiscal Services shall determine to be in the best interest of the City and County; (b) paying the cost of any public improvements, including equipment, (1) for which an appropriation is made in a capital budget ordinance, including public improvements relating to the wastewater system of the City and County, [or] (2) public improvements relating to the water system managed by the Board of Water Supply, or (3) if not included in (1) above, public improvements, including equipment, relating to the HHCTP, and for which General Obligation Bonds or Revenue Bonds are authorized to be issued, in advance of the issuance of such General Obligation Bonds or Revenue Bonds, or, in the case of equipment, instead of the issuance of General Obligation Bonds or Revenue Bonds; and (c) paying all costs incurred in the issuance of such Commercial Paper and the refunding of any General Obligation Bonds[.]; provided, however, that, unless there is a catastrophic event, the aggregate principal amount at any one time of outstanding Commercial Paper notes issued in connection with the HHCTP shall not exceed the lesser of: (a) One Hundred Million Dollars (\$100,000,000), or (b) the total aggregate principal amount of Commercial Paper notes permitted to be outstanding at any one time under the financial plan submitted by HART to the Federal Transit Administration. For the purposes of this section, "catastrophic event" means a natural or humanly caused occurrence arising from conditions beyond the control of the City and County or HART, such as a thunderstorm, tornado, hurricane, flood, earthquake or tsunami, which results in the declaration of a state of emergency or disaster by the State or by the federal government. The proceeds of the Commercial Paper shall be applied as provided in Section 8 hereof."

SECTION 4. Ordinance 01-28 is amended by amending Section 8 to read as follows:

"SECTION 8. Application of Proceeds. The proceeds of the Commercial Paper are hereby irrevocably appropriated for the purposes set forth herein, and such proceeds, together with any other funds of the City and County which are legally available therefor, shall be deposited as determined by the Director of Budget and Fiscal Services and applied as directed by the Director of Budget and Fiscal Services:

(1) to the payment of costs of public improvements, including equipment, (a) authorized pursuant to any capital budget ordinance of the City and County, including public improvements relating to the wastewater system of the City and County, to the extent the appropriation for such costs has not lapsed or been satisfied, [or] (b) public improvements relating to the water system managed by the Board of Water, for which the Board of Water Supply has submitted a request by resolution of the Board of Directors of the Board of Water Supply to the Council [of the City and County]



A BILL FOR AN ORDINANCE

to issue general obligation commercial paper for such improvements, or (c) if not included in (a) above, public improvements, including equipment, relating to HHCTP;

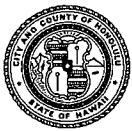
(2) to pay the principal of, premium (if any) and interest on any General Obligation Bonds or Commercial Paper or obligations to the provider of any credit or liquidity facility to be refunded; and

(3) to pay costs of issuance of the Commercial Paper and any related refunding, including without limitation, the initial fees of any issuing and paying agents or registrars, the fees of any dealers, financial consultants and bond counsel, rating agency fees, escrow agent fees, fees for verification of refunding escrow calculations, fees and expenses for any liquidity or credit enhancement, the cost of preparation of any documentation relating to the Commercial Paper, including any offering document and definitive Commercial Paper, and any cost of publications required by law.

Pending the time the proceeds of the Commercial Paper are required to pay any General Obligation Bonds to be refunded as provided in (2) above, the proceeds of such Commercial Paper, together with any other funds of the City and County which are legally available therefor, may be held by the Director of Budget and Fiscal Services in trust for such purposes or may be held by a financial institution selected by the Director of Budget and Fiscal Services to serve as escrow agent under an escrow agreement, such agreement to be in such form and containing such terms and provisions as the Director of Budget and Fiscal Services deems appropriate, and, in either case, invested as permitted by law. The Director of Budget and Fiscal Services is hereby authorized and directed to serve as such escrow agent or to select a qualified financial institution to serve in such capacity, and to determine the form and terms of any such escrow agreement and any fee agreement to be entered into with such financial institution. The Director of Budget and Fiscal Services is hereby further authorized and directed to determine the date or dates upon which the General Obligation Bonds or portions thereof are to be redeemed and to give or cause to be given any appropriate notices of such redemption."

SECTION 5. Ordinance 01-28 is amended by adding a new Section 14 to read as follows:

"SECTION 14. HHCTP Commercial Paper. Notwithstanding anything to the contrary contained herein, each issue of Commercial Paper by the City and County, the proceeds of which will be applied to fund the payment of costs of public improvements, including equipment, relating to the HHCTP (the "HHCTP Commercial Paper"), shall be subject to the following conditions precedent:



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 37 (2012), CD1

A BILL FOR AN ORDINANCE

(1) the Council shall have adopted an ordinance or resolution, whichever is required, approved by affirmative vote of at least two-thirds of the members of the Council (a) authorizing the issuance, sale and use of proceeds of General Obligation Bonds for the payment of the costs of public improvements, including equipment, relating to the HHCTP, as well as the payment, refunding or refinancing of the HHCTP Commercial Paper, and (b) determining the maximum principal amount of such General Obligation Bonds to be issued for such issue;

(2) HART shall submit a request in writing to the Council in the form of a resolution adopted by the Board of Directors of HART setting forth the details of such request and issue of HHCTP Commercial Paper; such request to be accompanied by a certificate from a consulting engineer approved by the City and County demonstrating that HART has sufficient revenues to reimburse the City and County for all payments of principal and interest on such issue of HHCTP Commercial Paper as such principal and interest comes due.

The consulting engineer reference in (2) above shall be an independent consulting engineer or engineering firm or corporation having special skill, knowledge and experience in analyzing the operations of transportation systems substantially similar to the HHCTP, preparing farebox revenue analyses, forecasting the ridership and revenues of transportation systems substantially similar to the HHCTP, forecasting surcharges and taxes similar to the City and County surcharge on the state tax, preparing feasibility reports with respect to the financing of such transportation systems and advising on the operation of such transportation systems.

In addition, HART shall reimburse the General Fund for the payment of principal and interest on the HHCTP Commercial Paper, as well as for any costs that are incurred by the City and County in connection with issuance of HHCTP Commercial Paper that are not paid from proceeds of HHCTP Commercial Paper, as well as any ongoing costs relating thereto, including but not limited to, costs relating to post-issuance compliance, tax compliance, rebate, continuing disclosure, bank fees, rating agency fees, credit enhancement fees, paying agent fees, and remarketing fees, and costs in connection with any audits; and

(3) the City and HART shall enter into a memorandum of understanding subject to the provisions of Section 15.



A BILL FOR AN ORDINANCE

SECTION 6. Ordinance 01-28 is amended by adding a new Section 15 to read as follows:

"SECTION 15. Memorandum of Understanding Relating to HART. Prior to the initial issuance of HHCTP Commercial Paper, the City and County shall submit to the Council a memorandum of understanding setting forth the obligations of HART to the City and County concerning the HHCTP Commercial Paper and other forms of general obligation indebtedness. The memorandum of understanding shall require that the City and County be reimbursed by HART for any payments of principal and interest and any other costs incurred by the City and County relating to the issuance of HHCTP Commercial Paper and other forms of general obligation indebtedness.

HART shall not submit the request referenced in paragraph (2) of Section 14 unless the Council has approved such memorandum of understanding by resolution."

SECTION 7. Repeal of Conflicts. All ordinances and resolutions, and any portions of ordinances and resolutions, heretofore enacted or adopted by the Council which are in conflict or inconsistent with any provision of this ordinance shall be and are hereby repealed to the extent of such conflict or inconsistency. Except amended hereby and by Ordinance 04-36 and Ordinance 10-15, Ordinance 01-28 shall remain in full force and effect.

SECTION 8. In sections 3, 4, 5 and 6 of this ordinance, ordinance material to be deleted is bracketed and new ordinance material is underscored. In these sections, the titles of the sections are underscored because the titles were underscored in Ordinance 01-28.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 37 (2012), CD1

A BILL FOR AN ORDINANCE

SECTION 9. Effective Date. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Ernest Martin (BR)

DATE OF INTRODUCTION:

April 17, 2012
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

PETER B. CARLISLE, Mayor
City and County of Honolulu